PART 873—SIMPLIFIED PROCEDURES FOR HEALTH-CARE RESOURCES

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Parent topic: SUBCHAPTER I—DEPARTMENT SUPPLEMENTARY REGULATIONS

873.101 Policy.

(a) *General.* In accordance with 38 U.S.C. 8153, to secure health-care resources which otherwise might not be feasibly available, or to effectively utilize certain other health-care resources, the

Department of Veterans Affairs (VA) may make arrangements by contract for the mutual use, or exchange of use, of health-care resources between VA health-care facilities and any health-care provider, or other entity or individual. This part prescribes simplified procedures for contracts with entities not affiliated with VA under 38 U.S.C. 7302 to secure health-care resources that are a commercial service, or the use of medical equipment or space. VA may enter into such a contract if such resources are not, or would not be, used to their maximum effective capacity. (38 U.S.C. 8153)

(b) *Precedence.* The procedures in this part shall be used in conjunction with the Federal Acquisition Regulation (FAR) and other parts of the VA Acquisition Regulation (VAAR). However, when a policy or procedure in the FAR or another part of the VAAR is inconsistent with the procedures contained in this part, this part shall take precedence. (38 U.S.C. 8153)

873.102 Definitions.

Commercial service means a service that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts. (38 U.S.C. 8153)

Health-care providers include health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources. (38 U.S.C. 8153)

Health-care resource includes hospital care and medical services (as those terms are defined in 38 U.S.C. 1701 and services under 38 U.S.C. 1782 and 1783) any other health-care service, and any health-care support or administrative resource. (38 U.S.C. 8153))

873.103 Priority sources.

Except for the acquisition of covered services available from the Committee for Purchase From People Who Are Blind or Severely Disabled and the AbilityOne Program (see FAR subpart 8.7), there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space in accordance with 808.002(a)(2) and 873.107. (38 U.S.C. 8153)

873.104 Competition requirements.

(a) *Affiliated institutions.*

(1) A health-care resource may be acquired on a sole source basis if a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the VA in accordance with 38 U.S.C. 7302, including medical practice groups and other entities associated with affiliated institutions, blood banks, organ banks, or research centers. (38 U.S.C. 8153(a)(3)(A))

(2) Acquisitions of health-care resources identified in paragraph (a)(1) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101.

(b) *Non-affiliated entities.*

(1) If the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a)

(1) of this section, contracting officers shall permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation for the resource to be procured, and provide for the consideration by VA of bids, proposals, or quotations so submitted. (38 U.S.C. 8153(a)(3)(B))

(2) Acquisition of health-care resources identified in paragraph (b)(1) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (b)(1) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in FAR 6.303. (38 U.S.C. 8153(a)(3)(D))

873.105 Acquisition planning.

(a) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include fiscal, legal, administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher-level designee. At a minimum, the team must include the contracting officer and a representative of the Office of General Counsel and the requesting service. (38 U.S.C. 8153)

(b) The contracting officer or the acquisition team, as appropriate, must conduct market research, including satisfying the requirements of 808.002(a)(2) and 873.107, Socioeconomic programs, and a VA Rule of Two determination (819.502-2). It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.107. (38 U.S.C. 8153)

(c) In lieu of the requirements of FAR part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes—summarizing decisions, actions, and conclusions—shall be prepared and included in the contract file, along with a copy of the briefing materials. (38 U.S.C. 8153)

873.106 Exchanges with industry before receipt of proposals.

(a) Exchange of information among all interested parties involved in an acquisition described in 873.104(b), from the earliest identification of a requirement through release of the solicitation, is encouraged. Any exchange of information must be consistent with procurement integrity

requirements in FAR 3.104. The nature and extent of exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer. (38 U.S.C. 8153)

(b) Techniques to promote early exchange of information include—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the provisions therein would provide relevant information;

(4) One-on-one meetings with potential offerors;

(5) Presolicitation notices;

(6) Draft requests for proposals (RFPs);

(7) Requests for information (RFIs);

(8) Presolicitation or preproposal conferences;

(9) Site visits;

(10) Electronic notices (e.g., internet);

(11) Use of the System for Award Management (SAM) (*see* *http://www.sam.gov/*); and

(12) Researching VA's Vendor Information Pages (VIP) database at *https://www.vip.vetbiz.va.gov/*.

873.107 Socioeconomic programs.

(a) The Veterans First Contracting Program in VAAR subpart 819.70 takes precedence over other small business programs. (38 U.S.C. 8127-8128)

(b)

(1) Except for contract actions subject to 808.002(a)(2), competitive contract actions not otherwise excluded under this part shall be set-aside for VIP-listed service-disabled veteran-owned small business (SDVOSB) concerns or veteran-owned small business (VOSB) concerns if the contracting officer has a reasonable expectation that two or more eligible small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127-8128)

(2) The contracting officer shall proceed with the acquisition under the simplified procedures of this part considering priority sources (see 808.008(a)(2) and 873.103) and preferences for other small businesses in accordance with 819.203-70 and 819.7004. (38 U.S.C. 8153)

(c) Without regard to FAR 13.003(b)(1), 19.203, 19.502, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a

waiver is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(d) The contracting officer shall ensure priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences, established by 38 U.S.C. 8127 and 8128, as implemented in VAAR subpart 819.70, the Veterans First Contracting Program. Specifically, the contracting officer shall consider preferences for verified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for verified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small business concerns in accordance with FAR 19.203, 819.203-70, and 819.7004. (38 U.S.C. 8153)

873.108 Publicizing contract actions.

(a) All competitive acquisitions under this part, except as provided in paragraph (b) of this section, for dollar amounts in excess of the SAT, shall be publicly announced utilizing a medium designed to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Notice shall be published for a reasonable time prior to issuance of a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the request for quotation (RFQ) or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government. (38 U.S.C. 8153)

(b) The requirement for public announcement does not apply to sole source acquisitions described in 873.104(a). However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from an institution not affiliated with the VA in accordance with 38 U.S.C. 7302, if conducted on a sole source basis, must still be justified and publicized (see 873.104(b)(2)). (38 U.S.C. 8153)

(c) For acquisitions below the SAT, a public announcement is optional. (38 U.S.C. 8153)

(d) Each solicitation issued under the procedures in this part must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and this part. (38 U.S.C. 8153)

873.109 General requirements for acquisition of health-care resources.

(a) *Source selection authority.* Unless the head of the contracting activity (HCA) appoints another individual to serve as the Source Selection Authority (SSA), the contracting officer shall be the SSA for acquisitions of health-care resources, consisting of commercial services, or the use of medical

equipment or space, utilizing the guidance contained in this part. (38 U.S.C. 8153)

(b) *Performance work statement/statement of work.* The performance work statement (PWS) or statement of work (SOW) must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition. (38 U.S.C. 8153)

(c) *Documentation.* Without regard to FAR 13.106-3(b), 13.501(b), or 15.406-3, the contract file must include—

(1) A brief written description of the procedures used in awarding the contract;

(2) A written determination that the health-care resources being procured are not otherwise feasibly available or that utilization of such health-care resources is necessary to meet mission requirements;

(3) Documentation of market research and the results of such research;

(4) The number of offers received; and

(5) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision. (38 U.S.C. 8153)

(d) *Time for receipt of quotations or offers.*

(1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in the solicitations.

(2) Without regard to FAR 15.208 or 52.212-1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(d)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs). (38 U.S.C. 8153)

(e) *Cancellation of procurements.* Any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government and a memorandum for the record in included in the solicitation file explaining the reasons for the cancellation. (38 U.S.C. 8153)

873.110 Solicitation provisions.

(a) As required in 873.109(d), contracting officers shall set a reasonable time for receipt of quotations or proposals and shall insert the provision at 852.273-70, Late Offers, in all RFQs and RFPs exceeding the micro-purchase threshold. However, this provision shall not be used if the provision 852.273-71, Alternative Negotiation Techniques, is to be used. (38 U.S.C. 8153)

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273-71, Alternative Negotiation Techniques, when either of the alternative

negotiation techniques described in 873.111(d)

(1) will be used. (38 U.S.C. 8153)

(c) The contracting officer shall insert the provision at 852.273-72, Alternative Evaluation, in lieu of FAR provision 52.212-2, Evaluation—Commercial Items, when the alternative negotiation technique described in 873.111(d)(1)(ii) will be used. (38 U.S.C. 8153)

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under a RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273-73, Evaluation—Health-Care Resources, in the RFQ or RFP in lieu of FAR provision 52.212-2. (38 U.S.C. 8153)

(e) As provided at 873.113(f), if award may be made without exchange with offerors, the contracting officer shall include the provision at 852.273-74, Award Without Exchanges, in the RFQ or RFP. (38 U.S.C. 8153)

(f) The contracting officer shall insert the FAR clause at 52.207-3, Right of First Refusal of Employment, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151-8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees. (38 U.S.C. 8153)

873.111 Acquisition strategies for health-care resources.

The following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions. (38 U.S.C. 8153)

(a) *Request for quotations (RFQ).*

(1) Without regard to FAR subparts 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made. (*see* FAR 13.004)

(2) For acquisitions in excess of the SAT, the procedures set forth in FAR part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein. (38 U.S.C. 8153)

(b) *Sealed bidding.* FAR part 14 provides procedures for sealed bidding.

(c) *Multiphase acquisition technique—*

(1) *General.* Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal

from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror. (38 U.S.C. 8153)

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph. (38 U.S.C. 8153)

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information). (38 U.S.C. 8153)

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision. (38 U.S.C. 8153)

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision. (38 U.S.C. 8153)

(6) *Debriefing.* Without regard to FAR 15.505, contracting officers must debrief offerors whose proposals are not accepted under a competitive request for proposals (RFP) as required by 873.118. (38 U.S.C. 8153)

(d) *Alternative negotiation techniques.*

(1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (*see* FAR 3.104). (38 U.S.C. 8153)

873.112 Evaluation information.

(a) Without regard to FAR 15.304, Evaluation factors and significant subfactors (except for 15.304(c)

(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition. (38 U.S.C. 8153)

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate. (38 U.S.C. 8153)

(d) The relative importance of any evaluation information included in a solicitation must be set forth therein. (38 U.S.C. 8153)

873.113 Exchanges with offerors.

(a) Without regard to FAR 15.201 or 15.306, acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions are not applicable to acquisitions under this part. (38 U.S.C. 8153)

(b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal. (38 U.S.C. 8153)

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, omissions, or deficiencies) in an Offeror's proposal. (38 U.S.C. 8153)

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors. (38 U.S.C. 8153)

(e) Except for acquisitions based on alternative negotiation techniques contained in 873.111(d)(1),

the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR parts 3 and 24. (38 U.S.C. 8153)

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary. (38 U.S.C. 8153)

873.114 Best value pool.

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations are not applicable to acquisitions under this part 873. (38 U.S.C. 8153)

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror. (38 U.S.C. 8153)

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time. (38 U.S.C. 8153)

873.115 Proposal revisions.

(a) The contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers n. In any case, contracting officers and acquisition team members must safeguard all proposals and revisions to avoid unfair dissemination of an offeror's proposal. (38 U.S.C. 8153)

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions. (38 U.S.C. 8153)

(c) Requesting and/or receiving proposal revisions does not necessarily conclude exchanges.

However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions. (38 U.S.C. 8153)

873.116 Source selection decision.

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The SSA shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The SSA may determine that all proposals should be rejected if it is in the best interest of the Government. (38 U.S.C. 8153)

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the SSA requests such assistance. (38 U.S.C. 8153)

(c) The source selection decision must be documented in accordance with FAR 15.308. (38 U.S.C. 8153)

873.117 Award to successful offeror.

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror. (38 U.S.C. 8153)

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract. (38 U.S.C. 8153)

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award. (38 U.S.C. 8153)

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period. (38 U.S.C. 8153)

873.118 Debriefings.

Offerors whose proposals are not accepted under a competitive request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506. (38 U.S.C. 8153)